IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2833 OF 2006

Chandrakant Jagannath Shelar & Anr. ....Petitioners

Versus

Smt. Smita Ramchandra Divadkar & Anr. ....Respondents

Mr.G.S.Godbole & Nitin Muley for petitioners

CORAM : P.V.KAKADE, J.

DATE : 26TH APRIL, 2006

P.C.:

1. Heard the learned counsel for the petitioners.

2. The present petitioner is the plaintiff in Reg. Civil Suit No.37 of 1992. The matter was remanded to the lower appellate court by order of this court on 8.12.2003 with direction that the appellate court to decide the issues afresh and in that course the parties were given liberty to adduce additional evidence on record.

3. In the course of the said hearing before the lower appellate court, application was made in Civil Appeal No.91 of 1997 that the defendant wanted to examine witness, who had acted as Court Commissioner in another suit i.e. Reg. Civil Suit No.9 of 1986 and sought summons for bringing the witness before the court. That application was challenged by the present petitioner-plaintiff by application on the ground that the said witness was Court Commissioner in earlier suit and through such witness the Commission Report was sought to be brought on record, which would not be admissible in the present cause as it was not binding upon the parties.

4. After hearing both the parties the lower appellate court was of the view that it was the sole discretion of the court to determine what evidence is to be allowed to be brought on record and what not and the admissibility of such evidence would be determined at the time of hearing of the proceeding.

5. I do not see any fault in the reasoning adopted by the lower appellate court while rejecting the present petitioner’s application requesting the court not to

record the evidence of the said witness. It is needless to mention that unless and until evidence is brought on record it could not be possible for any court of law to decide the relevancy as well as admissibility of the evidence qua the least at hand. In other words, the concerned court would be at liberty to discard the evidence if it is ultimately found inadmissible in evidence for any reason whatsoever. That aspect can also be argued before the lower appellate court by the present petitioner. However, the lower court cannot be precluded from considering the application of the present respondent to bring any evidence on record by issuance of witness summons to any particular witness for his evidence or production of any documents.

6. In the result the petition is devoid of any merits and stands dismissed in limine.

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